



House of Representatives

General Assembly

File No. 241

January Session, 2011

House Bill No. 6293

House of Representatives, March 28, 2011

The Committee on Planning and Development reported through REP. GENTILE of the 104th Dist., Chairperson of the Committee on the part of the House, that the bill ought to pass.

AN ACT AUTHORIZING MUNICIPALITIES TO COLLECT THE MARIJUANA AND CONTROLLED SUBSTANCES TAX.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 12-651 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2011*):

3 (a) A tax is imposed on any marijuana or controlled substances
4 purchased, acquired, transported or imported into the state. Payment
5 thereof shall be evidenced by the permanent affixing of stamps on the
6 marijuana or controlled substance immediately after receipt. Each
7 stamp or other official indicia may be used only once.

8 (b) The tax imposed pursuant to this section shall be at the following
9 rates: (1) On each gram of marijuana or portion of a gram, three dollars
10 and fifty cents, and (2) on each gram of a controlled substance, or
11 portion of a gram, two hundred dollars or on each fifty dosage units of
12 a controlled substance that is not sold by weight, or portion thereof,
13 two thousand dollars. For the purpose of calculating the tax due under

14 this section, an ounce of marijuana or other controlled substance is
15 measured by the weight of the substance in the dealer's possession.

16 (c) Any tax imposed pursuant to this section is due and payable
17 immediately upon acquisition or possession in this state by a dealer.

18 (d) Notwithstanding the provisions of this chapter, any
19 municipality having a population of less than twenty-five thousand
20 may collect the tax imposed pursuant to this section on any marijuana
21 or controlled substance that is seized in such municipality by a law
22 enforcement officer as a result of a lawful arrest of a dealer or a lawful
23 search of the real or personal property of a dealer, provided (1) such
24 tax is due and payable, (2) the chief of police of such municipality or, if
25 such municipality does not have an organized police department, the
26 chief elected official of such municipality, notifies the commissioner of
27 such municipality's intent to collect such tax, and (3) the municipality
28 complies with the provisions of subsection (e) of this section. The full
29 amount of any tax collected pursuant to this subsection may be
30 retained by such municipality.

31 (e) Before a municipality may collect any tax imposed pursuant to
32 this section, the chief elected official of such municipality shall appoint
33 one or more hearing officers, other than police officers or persons who
34 work in the police department, to hear the petitions of aggrieved
35 taxpayers and shall establish by ordinance a hearing procedure
36 following the timelines and requirements set forth in section 12-553.
37 The provisions of sections 12-553 and 12-554, adapted accordingly,
38 shall apply to hearings before and appeals from a municipality under
39 this section.

40 Sec. 2. Section 12-655 of the general statutes is repealed and the
41 following is substituted in lieu thereof (*Effective October 1, 2011*):

42 (a) Each dealer shall keep complete and accurate records of all
43 marijuana or controlled substances on which a tax is imposed. Such
44 records shall be a kind and in such form as the commissioner may
45 prescribe and shall be preserved for three years in such manner as to

46 insure permanency and accessibility for inspection by the
47 commissioner or his authorized agents. The commissioner and his
48 authorized agents and any municipality collecting a tax pursuant to
49 section 12-651, as amended by this act, may examine the books, papers
50 and records of any dealer for the purpose of determining whether the
51 tax imposed by this chapter has been paid and may examine any
52 marijuana or controlled substances upon any premises where such
53 marijuana or controlled substances are possessed to determine if the
54 provisions of this chapter are being obeyed.

55 (b) If, after an examination of the invoices, books and records of a
56 dealer, or if, from any other information obtained by [him] the
57 commissioner or [his] the commissioner's authorized agents or the tax
58 collector for any municipality collecting a tax pursuant to section 12-
59 651, as amended by this act, the commissioner or tax collector
60 determines that the dealer has not purchased sufficient stamps to cover
61 his receipts and sales or other disposition of any marijuana or
62 controlled substances, [he] the commissioner or tax collector shall
63 thereupon assess the deficiency in tax. There shall be imposed a
64 penalty of ten per cent of the deficiency or fifty dollars, whichever
65 amount is greater, and interest shall accrue on the tax at the rate of one
66 per cent per month from the due date of such tax to the date of
67 payment. In any case where a dealer cannot produce evidence of
68 sufficient stamp purchases to cover the receipt of any marijuana or
69 controlled substances, it shall be presumed that such marijuana or
70 controlled substances were sold without having the proper stamps
71 affixed.

72 (c) If the commissioner determines that the deficiency or any part
73 thereof is due to a fraudulent intent to evade the tax, there shall be
74 imposed a penalty of twenty-five per cent of the deficiency and interest
75 shall accrue on the tax at the rate of one per cent per month or fraction
76 thereof from the due date of such tax to the date of payment. Subject to
77 the provisions of section 12-3a, the commissioner may waive all or part
78 of the penalties provided under this chapter when it is proven to his
79 satisfaction that the failure to pay any tax on time was due to

80 reasonable cause and was not intentional or due to neglect. The
81 amount of any tax, penalty or interest due to the commissioner and
82 unpaid under the provisions of this chapter may be collected under the
83 provisions of section 12-35. The warrant therein provided for shall be
84 signed by the commissioner or his authorized agent. The amount of
85 any such tax, penalty and interest shall be a lien, from the last day of
86 the month next preceding the due date of such tax until discharged by
87 payment, against all real estate of the taxpayer within the state, and a
88 certificate of such lien signed by the commissioner may be filed for
89 record in the office of the clerk of any town in which such real estate is
90 situated, provided no such lien shall be effective as against any bona
91 fide purchaser or qualified encumbrancer of any interest in any such
92 property. When any tax with respect to which a lien has been recorded
93 under the provisions of this section has been satisfied, the
94 commissioner, upon request of any interested party, shall issue a
95 certificate discharging such lien, which certificate shall be recorded in
96 the same office in which the lien is recorded. Any action for the
97 foreclosure of such lien shall be brought by the Attorney General in the
98 name of the state in the superior court for the judicial district in which
99 the property subject to such lien is situated, or, if such property is
100 located in two or more judicial districts, in the superior court for any
101 one such judicial district, and the court may limit the time for
102 redemption or order the sale of such property or make such other or
103 further decree as it judges equitable.

104 (d) The amount of any tax, penalty and interest due to a
105 municipality and unpaid under the provisions of this chapter shall
106 constitute a lien upon any real estate owned by the dealer in the
107 municipality collecting such tax, penalty and interest. Each such lien
108 may be continued, recorded and released in the manner provided by
109 the general statutes for continuing, recording and releasing property
110 tax liens. Each such lien shall take precedence over all other liens filed
111 after October 1, 2011, and encumbrances, except taxes, and may be
112 enforced in the same manner as property tax liens.

113 ~~[(c)]~~ (e) Except in the case of a wilfully false or fraudulent intent to

114 evade the tax, no assessment of additional tax with respect to any
115 return shall be made after the expiration of more than three years from
116 the date of the filing of such return or from the original due date of
117 such return, whichever is later, provided, if no return has been filed as
118 provided in this chapter, the Commissioner of Revenue Services may
119 determine the amount of tax due from the best information available
120 and assess such tax together with statutory penalties and interest at
121 any time. If prior to the expiration of the period prescribed in this
122 section for the assessment of additional tax, a taxpayer has consented
123 in writing that such period may be extended, the amount of such
124 additional tax due may be determined at any time within such
125 extended period. Any such extended period may be further extended
126 by consent in writing before the expiration of such extended period.

127 [(d)] (f) The provisions of sections 12-553 and 12-554 shall apply to
128 the provisions of this chapter in the same manner and with the same
129 force and effect as if the language of said sections had been
130 incorporated in full into said chapter and had expressly referred to the
131 tax imposed under said chapter, except to the extent that any such
132 provision is inconsistent with a provision of said chapter.

| | | |
|---|-----------------|--------|
| This act shall take effect as follows and shall amend the following sections: | | |
| Section 1 | October 1, 2011 | 12-651 |
| Sec. 2 | October 1, 2011 | 12-655 |

PD *Joint Favorable*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact: None

Municipal Impact:

| Municipalities | Effect | FY 12 \$ | FY 13 \$ |
|---|------------------------|------------------|------------------|
| Various Municipalities, Population < 25,000 | Potential Revenue Gain | Less than 25,000 | Less than 25,000 |

Explanation

Enactment of the bill would result in potential municipal revenues that are not anticipated to exceed \$25,000.¹ It would allow any municipality having a population of less than 25,000 to institute collection of the marijuana and controlled substances tax. To the extent that any community chooses to do so, it would potentially receive revenues based on the following statutory rates:

- Marijuana, each gram or portion thereof - \$3.50,
- Controlled substance, each gram or portion thereof - \$200,
- Controlled substance not sold by weight, each 50 dosage units or portion thereof - \$2,000.

Any community opting to institute tax collection would be expected to factor the costs of establishing a hearing process by ordinance, and appointing one or more hearing officers, into its decision making process prior to implementation.

The Out Years

The annualized ongoing fiscal impact identified above would

¹ In FY 10, the Department of Revenue Services collected approximately \$22,500 from the marijuana and controlled substance tax.

continue into the future subject to the amount of marijuana/controlled substances seized by municipal law enforcement officers.

OLR Bill Analysis**HB 6293*****AN ACT AUTHORIZING MUNICIPALITIES TO COLLECT THE MARIJUANA AND CONTROLLED SUBSTANCES TAX.*****SUMMARY:**

This bill allows a municipality with a population under 25,000 to collect unpaid taxes on marijuana and controlled substances when they are seized in the municipality during an arrest or found during a search. Currently, all tax is collected by the Department of Revenue Services (DRS).

The bill requires the municipality to establish, by ordinance, a hearing process for the dealer that allows for an appeal to Superior Court.

It also extends to a municipality trying to collect the tax the DRS commissioner's authority to examine records, marijuana, and controlled substances to determine if a dealer has paid the appropriate tax.

Under the bill, any unpaid taxes of this nature owed to a municipality constitute a lien against any property the dealer has in the municipality and are treated similarly to a property tax lien.

The bill also makes technical and conforming changes.

EFFECTIVE DATE: October 1, 2011

COLLECTING THE TAX ON MARIJUANA AND CONTROLLED SUBSTANCES

The bill allows municipalities with fewer than 25,000 people to collect the state-imposed tax on any marijuana or controlled substance seized within the municipality by a law enforcement officer as a result

of a lawful arrest of a dealer or a lawful search of a dealer's personal or real property. The municipality may collect the tax so long as the:

1. tax is due and payable;
2. municipality's chief of police, or chief elected official if a municipality does not have an organized police department, notifies the DRS commissioner of the municipality's intent to collect the tax; and
3. chief elected official of the municipality, prior to collecting the tax, establishes by ordinance a hearing process to hear petitions from dealers.

The municipality may keep the full amount of the collected tax. Currently, all tax is collected by DRS and retained by the state.

HEARING PROCESS

The bill requires the chief elected official to appoint one or more hearing officers, other than police officers or police department employees, to hear petitions from aggrieved dealers. The timeline and requirements are those established in statute for appealing an admissions, cabaret, or dues tax assessment from the DRS commissioner (CGS §§ 12-553 and 12-554) and must be adapted accordingly. In that process, the aggrieved party has 60 days to appeal the assessment to the commissioner. The aggrieved can appeal the commissioner's decision to the Superior Court.

EXAMINING RECORDS AND MARIJUANA

Under current law, the commissioner and his authorized agents are allowed to:

1. examine the books, papers, and records of any dealer to determine whether the imposed tax has been paid;
2. examine any marijuana or controlled substances in any premises where they are possessed to determine if the

substances bear the proper tax stamp; and

3. assess the dealer the deficiency in tax if the examination of the invoices, books, and records shows that the dealer has not purchased sufficient stamps to cover the receipts and sales or other disposition of any marijuana or controlled substance (see BACKGROUND).

The bill extends this authority to the municipality collecting the tax or the municipality's tax collector.

PROPERTY TAX LIENS

The bill specifies that the amount of any tax, penalty, and interest due a municipality and left unpaid constitutes a lien against any real estate the dealer owns in the municipality collecting the tax. It allows each lien to be continued, recorded, and released in the usual manner for continuing, recording, and releasing property tax liens. Under the bill, each such lien takes precedence over all other liens filed after October 1, 2011 and encumbrances, except taxes, and may be enforced in the same manner as property tax liens.

BACKGROUND

Marijuana and Controlled Substances Tax

The law prohibits anyone from purchasing, acquiring, transporting, or importing marijuana or controlled substances into the state and imposes a tax on violators. The tax, which varies for marijuana and controlled substances, is due when the dealer acquires or possesses any such substances. A stamp issued by the DRS commissioner and affixed to such substances indicates payment of the tax.

COMMITTEE ACTION

Planning and Development Committee

Joint Favorable

Yea 19 Nay 1 (03/07/2011)